IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 577 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRA L RAVIYA

Versus

PARTNER OF SHAH SYSTEM

Appearance:

1. Criminal Revision Application No. 577 of 2001

MR BR PARIKH for Petitioner No. 1

MRS REKHA B PARIKH for Petitioner No. 1

..... for Respondent No. 1

MS ANU S VERMA for Respondent No. 1/1-1/2

Mr S S Patel, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/09/2003

ORAL JUDGEMENT

The present revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') is for enhancement of the punishment imposed by the City Sessions Court at Ahmedabad in Criminal Appeal No.75/2000. The respondent herein faced a criminal trial in criminal case No.809/1996 before the learned Chief Metropolitan Magistrate, Ahmedabad for an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). Undisputedly, a cheque for an amount of Rs.4,700/- was dishonoured and, therefore, after following due process of law, a complaint was filed which was registered as Criminal Case No.809/96. At the end of the trial, the learned Magistrate convicted the two respondents for an offence punishable under Section 138 of the said Act and directed that each of the two respondents shall undergo S.I. for one month and shall pay fine of Rs. 5,000/-, in default of payment of fine, further S.I. for seven days was ordered. It was also directed that an amount of Rs.4,700/- deposited by the respondents be paid to the present petitioner under section 357 of the Code by way of compensation. Feeling aggrieved by the said judgment and conviction order of the trial court, the two respondents preferred Criminal Appeal No.75/2000 before the City Sessions Court at Ahmedabad.

2. It appears from the judgment of the Sessions Court at Ahmedabad dated 17.10.2001 that the learned Addl.Sessions Judge partly allowed the appeal. He confirmed the conviction of the present respondents for an offence punishable under section 138 of the said Act. However, the sentence of S.I. for one month imposed on the respondents by the trial court was set aside and the sentence of payment of fine imposed on the two respondents was confirmed. Feeling aggrieved by the said judgment and order of the Sessions Court, the petitioner has preferred this Revision Application before this Court.

3. It has been contended here that the Sessions Court has committed illegality in wiping out the jail sentence and therefore, the present revision may be allowed and the order of the Sessions Court setting aside the jail sentence may be set aside and the jail sentence imposed by the trial court may be restored.

4. Notice was issued and in response to the service of notice, Ms. Anu Verma, learned Advocate appears on behalf of the two contesting respondents and Mr S S

Patel, learned APP appears on behalf of the State. I have heard the learned Advocates for the parties and have perused the papers. It is not much in dispute that the cheque of Rs.4700/- was dishonoured and, therefore, the complaint was filed for an offence punishable under section 138 of the said Act. It is also not much in dispute that during the course of the trial, evidence was required to be recorded and accordingly evidence of witness was recorded on different dates i.e. 28.7.1998, 2.6.1999 and 18.8.1999. Thereafter on 12.7.2000, the contesting respondents deposited the cheque amount of Rs.4,700/- before the trial court. The matter was carried in appeal as aforesaid and during the pendency of the said appeal, the amount of interest @ 18% per annum was deposited by the respondents before the trial court. This fact is also not much in dispute. The learned Addl.City Sessions Judge appears to have considered the said fact that the contesting respondents have deposited the amount with interest @ 18% per annum and, therefore, the jail sentence imposed on the respondents was required to be set aside. The learned Advocate for the petitioner-original complainant has argued at length that the Sessions Court was not justified in setting aside the jail sentence. It is his argument that the deposit was made by the respondents before the trial court without interest and that too after completion of evidence and knowing full well that the case was going to result in conviction. It is true that the deposit has been made after the examination of the aforesaid three witnesses as aforesaid and there was a delay in depositing the said amount. It is also true that the amount of interest was not deposited along with the deposit of cheque amount. But at the same time, it is also a fact that at least during the pendency of appeal, the respondents herein deposited the entire amount of interest @ 18% per annum and that amount is almost equal to the principal amount of the cheque i.e. Rs.4,300/-. Subsequent conduct of the accused may be relevant in many cases. This was a commercial transaction between the petitioner and the contesting respondent. The learned Advocate for the contesting respondents has argued that the computer was purchased by the contesting respondents for some commercial use at their own residence. It is also the argument of the learned Advocate for the contesting respondents that the two respondents are the aged mother and the son. The son is not physically very sound and the father of the respondent son-Ujal and husband of respondent Jyotiben is handicapped and a certificate to that effect has also been produced. A certificate has been issued by the Board for the Physically handicapped persns, Civil Hospital, Ahmedabad which shows that the

said person is handicapped to the extent of 60%. The respondents have also filed affidavit in support of their defence in the present revision. It is taken on record.

5. It appears from the aforesaid records that the amount of cheque has been deposited in full though at a late stage. It is also a matter of record that the amount of interest has been deposited before the Sessions Court during the pendency of the appeal. In that view of the matter, the trial court had considered the said aspect while imposing the jail sentence of one month. The Sessions Court has again considered the said fact. While so considering, it was found it fit and proper to to wipe out the jail sentence. It is required to be considered that so far as the mother is concerned, she is after all a woman and the son is also a young person who may not be sent to jail. It is required to be considered that when the petitioner herein can be compensated in terms of money then, in that case, it would not be absolutely necessary to send the two respondents - mother and the son to jail particularly when one is a woman and the other is a young person who is also not physically sound and doing business at his residence.

6. It is also required to be considered that the learned Advocate for the petitioner has submitted that the learned Advocate for the petitioner appearing before the Sessions Court was not present when the matter was argued. It was upto him to decide whether or not to appear before the Sessions Court to argue the matter on behalf of the present petitioner. The fact remains that he did not find it proper to appear before the court concerned to plead the case of the petitioner before the court concerned. However, the Sessions Court has considered that the full amount with interest has already been deposited and that the first accused is a lady and the second accused is a young boy. It cannot be said that the Sessions Court has committed illegality in setting aside the jail sentence. The Sessions Court had jurisdiction to pass the order in question and that fact is not in dispute. Therefore, the order cannot be said to be without jurisdiction. This means that the order of the Sessions Court is neither without jurisdiction nor illegal. In that view of the matter, this court has to be slow in interfering with the said judgment and order of the Sessions Court while exercising revisional jurisdiction.

7. In this connection, a decision of the Hon'ble Supreme Court in the case of Narsingh Das Tapadia v. Goverdhan Das Partani, reported in 2000 (4) Crimes 12

(SC) has been referred. There also the matter related to a conviction for an offence punishable under section 138 of the said Act. There the respondent had filed affidavit before the Hon'ble Supreme Court stating that the appellant had paid a sum of Rs.3,94,243.33 including cheque amount and the interest payable thereon. Annexures were also filed in support thereof. Learned Counsel had admitted the payment of the amount and, therefore, the Supreme Court felt that no useful purpose would be served by sending the respondent back to jail as the interest of justice would be served by imposing penalty of fine alone in the circumstances adverted to the judgment. In the present case also the amount of cheque with interest has been deposited at least before coming to this court and it is also required to be considered that one of the two accused is a woman and another is a young person doing his business with computer at his own house. In the facts and circumstances of the case, no case is made out for interference in exercise of revisional jurisdiction under section 397 read with section 401 of the Code.

8. For the foregoing reasons, I find no merit in the present revision application and therefore, it deserves to be dismissed. This revision is accordingly dismissed. Notice discharged.

[D P Buch, J.]
msp